

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISC. APPLICATION NO.290 OF 2015

**UGANDA MUSLIM WELFARE
ASSOCIATION**

..... **APPLICANT**

Versus

SAUDI MARBLE COMPANY

..... **RESPONDENT**

BEFORE HON. JUSTICE MICHAEL ELUBU

RULING

The Applicants, **UGANDA MUSLIM WELFARE ASSOCIATION** bring this application against the Respondents **SAUDI MARBLE COMPANY LTD** under *S.98 of The Civil Procedure Act, S.33 of The Judicature Act and Order 46 rr 1 and 8 of The Civil Procedure Rules.*

The Applicants pray that:

- a) The Order issued on the 19th of August 2015 by HW Kanyange Susan, Assistant Registrar, arising out of Miscellaneous Application No. 90/2006 be reviewed and/or set aside.
- b) Costs of the Application be provided for

The grounds upon which the application is made are that the Applicant brought the head suit No. 63/2006, against the Respondent, seeking inter alia orders that the forest land in dispute belongs to it; that the applicant was subsequently granted a Temporary Injunction

pursuant to M.A. 90/2006 where Court ordered that the status quo on the land be maintained until final determination of the suit; that the Respondent misled the court into issuing an order for a survey of 240 hectares which survey had already been done in 2007 after the order of Temporary Injunction was issued; that the Assistant Registrar's order was issued in error on the basis of wrong information and without due regard to Natural Justice; and finally that it is in the interest of justice that this order be issued to restrain the respondent or his agents or workmen from re-surveying the suit land until the suit is disposed of.

The application is particularised by the supporting affidavit of IMMAM SAM AHMAD SENTONGO who is the applicants' Secretary General and states that the demarcation of the 240 hectares was completed in 2007 at which point the respondent took possession of the rest of the forest which he continues to use. He adds that on 8th of January 2015 these parties jointly conducted a physical verification of the boundaries of the forest under the leadership of the National Forestry Authority and ascertained the area covering the 240 hectares belonging to the applicant.

It is not true, he asserts, that the respondents is not aware of the demarcation of the 240 hectares of land. The respondents had, through an ordinary letter, erroneously informed court that the applicant was in contempt of the order of Temporary Injunction on which basis the court then issued the order this application seeks to reverse.

The respondents deny the applicant's claims. Their reply was affirmed by UMAR ETUMYE a director of The Respondent Company who denies that any survey was done pursuant to the courts order of Temporary Injunction issued on 7th June 2007.

That the parties on the 8th of January 2015 embarked on the exercise of verification of the boundary marking but could not conclude as there was no surveyor present at the time. From then the applicant frustrated efforts to conclude the determination of the boundaries

of the disputed 240 hectares and as a result there is considerable disharmony as can be seen from criminal cases reported at Mayuge Police Station.

He deposes that it was in those circumstances that the Respondents wrote to court to ensure that its order was not in vain and properly enforced. He avers that there was no need for a formal application.

Etumye stated farther that it is not true that the applicants were not served as they were represented by Counsel in the names of Medard Segona of Lukwago and Company Advocates and the impugned order was issued after both Counsels present had addressed court.

When the head suit came up for hearing, the applicants prayed that this application be disposed of first. The court therefore gave the parties leave to file written submissions which are on the court record and which I will not reproduce here.

The background from a reading of the court record shows that on the 7th of June 2007 this court made an order that:

“A Temporary Injunction doth issue restraining the defendant /Respondent and its agents, servants/employees from further trespass and cutting down of the trees comprised in 240 hectares of south Busoga Forest Reserve designated for the Applicant, in Mayuge District, until final determination of Civil Suit No. 63/2006”

I have not seen any evidence, as claimed by the applicant, that this 240 hectares mentioned in this order was ascertained in 2007 by a survey.

The Respondent in the instant application was the respondent in application No. 90/2006 and wrote to the registrar of this court on the 30th of July 2015 praying that the parties appear before her to resolve the question of the 240 hectares. It was alleged that the applicants had abused the court order and were harvesting trees beyond the 240 hectares for which they claimed ownership.

The letter requested that when the parties appeared, the District Surveyor Mayuge would be ordered to carry out a survey to identify and demarcate the part of the forest in dispute.

On the 18th of August 2015 both sides appeared. One Medard Segona represented the Applicants and Emmanuel Ejokot appeared for the Respondents. As a consequence, the Assistant Registrar ordered that:

1. The District Surveyor to survey off 240 hectares subject of the Temporary Injunction.
2. Notice given to both parties. They should find convenient time.
3. No order as to costs.

It is this order that is the subject of this application.

At a later stage however, on the 24th of May 2016, this matter again came up before the Registrar of this Court. Both parties and their Counsels attended court.

An argument arose regarding the 240 hectares of forest land and as to which party was in breach of the injunctive court order issued by the Judge in 2006.

Mr. Asuman Basalirwa, for the Applicant, submitted that a joint survey involving both parties may sort out the issue and prayed court visit the site to sort out the matter.

HW the Deputy Registrar accordingly ordered that:

1. A joint survey involving the Mayuge District Surveyor and the National Forestry Authority boundary and survey specialist be commissioned to survey and cut off the 240 hectares as per the court injunction of 7th June 2007.
2. The surveyor to make a report before the next hearing.

The order is dated the 7th of June 2016.

A joint survey was indeed carried out and a report prepared and filed on the court record on the 15th of August 2016. The disputed 240 hectares was clearly demarcated and was surveyed off.

These then are the facts relevant to the instant application.

The relief the applicant has prayed for is provided for in S.82 of **the Civil Procedure Act**, Cap 71 which provides:

Any person considering himself or herself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit.

Under Order 46 r 1 of the Civil Procedure Rules the Court may grant the order to review if any of the following grounds is met:

- i. the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the applicants knowledge or could not be produced by him or her at the time when the decree was passed or the order made,
- ii. where there is some mistake or error apparent on the face of the record,
- iii. for any other sufficient reason,

In *Muhammed Allibhai vs WE Bukenya SCCA No. 56/96* it was stated that a person aggrieved for purposes of *S.82 of The CPA and O.42 of The CPR* is one who has suffered a legal grievance. A person suffers a legal grievance if the judgment given is against him or affects his interest.

In this instant case, it is true that there was no formal application before court on the 18th of August 2015. But it is also true that no survey was carried out following the order of the court on that day.

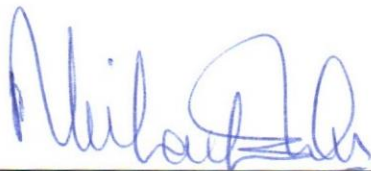
It was later when the applicants here moved court on 7th June 2016 for the survey to be carried out that it was done on the 15th of August 2016.

This court, with respect, does not agree that a survey was done in 2007 or that the applicants were not represented when the Registrar made her impugned order of the 19th of August 2015.

That said and in the circumstances, the applicant has not suffered a legal grievance as envisaged in S.82 of CPA nor have they shown that there was any error apparent on the face of the record or other sufficient cause for Court to review its order. The very order they pray should be reversed (of a survey) is similar in substance to one made pursuant to a prayer the applicants made on the 7th of June 2016 for a fresh survey.

The order of survey given puts in effect the Injunctive Order made in M.A. 90/2006. The survey carried out was as a result a prayer made on the applicant's behalf.

For the above reasons, I accordingly find that the present application has no merit and it is dismissed with costs.



MICHAEL ELUBU

JUDGE

31/10/2017